



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bill Strong Enterprises, Inc.

File: B-222492.2

Date: August 11, 1986

DIGEST

A low lump-sum bid for repair and modification of military family housing units that contains line item prices which exceed the statutory price limitation for some line items is technically nonresponsive. This bid may not be corrected to reallocate prices to other line items even where the lump-sum bid price would not change on reallocation because the bidder has not claimed or furnished proof of a mistaken price allocation. Although the bidder generally argues that it would not have intentionally submitted a nonresponsive bid, but for a mistake of some sort, this general claim of mistake is not sufficient to permit a reallocation of the bid price over the line items.

DECISION

Bill Strong Enterprises, Inc. (Bill Strong), has protested the award of a contract to LaForge and Budd Construction Co., Inc. (LaForge), under invitation for bids (IFB) No. F34650-86-B-0081, issued on March 11, 1986, by the Air Force for improvements to, and maintenance and repair of, military family housing at Tinker Air Force Base. Bids were requested for basic and additive work items.

Bill Strong submitted the lowest bid for the basic and additive work to be awarded, but Bill Strong's bid admittedly exceeded the IFB-stipulated statutory cost limit (\$26,800 per housing unit) for certain additive items. After bid opening, the Air Force contacted Bill Strong to find out whether a basis existed to suspect a mistake in the bid; however, based on its discussion with Strong, the Air Force decided that there was no basis to suspect a mistake in the protester's bid. The Air Force subsequently determined that Bill Strong's bid was nonresponsive, and the Air Force then awarded a contract to another concern for \$2,048,856, which was about \$15,000 more than the price of an award to Bill Strong for the same basic and additive work.

Bill Strong admits that its bid was "technically nonresponsive" because of the statutory cost limitation problem, but argues that our decision in Wynn Construction Co., B-220649, Feb. 21, 1986, 86-1 C.P.D. ¶ 184 (affirmed on reconsideration, B-220649.2, Apr. 14, 1986, 86-1 C.P.D. ¶ 360), provides authority for consideration of Bill Strong's bid.

The general rule with respect to statutory cost limitations is reflected in the Federal Acquisition Regulation, 48 C.F.R. § 36.205 (1985), which provides that contracts for construction shall not be awarded at a cost in excess of the statutory cost limitations, unless these limitations have been properly waived for the particular procurement. Thus, in the absence of a proper waiver, a bid exceeding the applicable cost limitations generally must be rejected. See Skip Kirchdorfer, Inc. and David Elder Constr. Co., Inc., B-204244, Nov. 24, 1981, 81-2 C.P.D. ¶ 425. Also, a nonresponsive bid generally may not be made responsive after bid opening.

These general rules, however, do not require rejection of a low bid with item prices exceeding specified cost limitations if the excessive price was due to a mistake and the actual bid intended is ascertainable. Wynn Construction Co., B-220649, supra; DeRalco, Inc., B-205127, Apr. 2, 1982, 82-1 C.P.D. ¶ 296.

In Wynn, the bid in question exceeded the relevant statutory cost limitation for certain bid items. The bidder claimed—and furnished evidence—that it had made a mistake in computing its prices for these items and that if it had not made this mistake its price for these items would have been within the statutory limit. At the same time, the bidder in Wynn insisted that its low, overall bid price would not change as a result of any correction. The mistake in the Wynn case involved the underpricing of the one item that was not subject to the statutory cost limitation by the same dollar amount of the overpricing as the items that were subject to the cost limitation.

We concluded that the bid in Wynn could be corrected by reallocating prices as determined from the bidder's worksheets so that the bid then conformed to the statutory limitation while the overall lump-sum bid remained the same. We allowed this reallocation because the correction did not change the company's overall lump-sum bid on which award was to be made, there was no argument raised that the evidence offered by the bidder was insufficient for correction purposes, and the bid as reallocated was not materially unbalanced. Consequently, even though the low bid was technically nonresponsive, we held the contracting agency was not required to accept the next higher bid because of what was, in effect, a mere bookkeeping error on the low bidder's part.

Unlike Wynn, Bill Strong has not claimed any error in computing "any particular costs in one bid item versus another." Nevertheless, Bill Strong argues that, although it has no clear and convincing evidence of a mistake, it should be permitted to reallocate its individual prices—without changing its lump-sum bid figure—so as to make its bid responsive to the statutory cost limit. Bill Strong argues that it would not have intentionally submitted a bid which was nonresponsive to the statutory cost limit and that, therefore, its bid reveals "an error or mistake on his part."

To permit bidders to cure the nonresponsiveness of their bids merely on the basis of general, unsubstantiated allegations of inadvertent error would open the competitive bidding system to the possibility of manipulation. For example, a bidder could submit a flagrantly nonresponsive bid and then, depending on the outcome of the bidding results, seek to cure the nonresponsiveness on a contrived claim of inadvertent error or decide not to cure the nonresponsiveness as the bidder's interest so dictated. Therefore, the holding in Wynn must be limited to those situations where the bidder offers clear and convincing proof of a mistaken price allocation, thus permitting bid correction under normal bid correction procedures without prejudice to other bidders. Since Bill Strong did not allege, let alone prove, a mistaken bid allocation, Bill Strong's bid was properly rejected.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel